

**191—46.10(521A) Stock offerings.**

**46.10(1)** No stock offering by a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company shall occur without the prior approval of the commissioner. The commissioner's approval may be obtained only through the application and hearing process described below.

**46.10(2)** Every application for approval of a stock offering shall contain the following information:

*a.* A description of the stock intended to be offered by the applicant, including a description of all shareholder rights.

*b.* The total number of shares authorized to be issued, the estimated number the applicant requests permission to offer, and the intended date or range of dates for the offer.

*c.* A justification for a uniform planned offering price or a justification of the method by which the offering price will be determined.

*d.* The name or names of any underwriter, syndicate member or placement agent involved and, if known, the name or names of each entity, person, or group of persons to whom the stock offering is to be made who will control 5 percent of the total outstanding class of shares, and the manner in which the offer is to be tendered. If any such entity or person is a corporation or business organization, the name of each member of its board of directors or equivalent management team shall be provided along with the name of each member of the board of directors of the offeror. Copies of any filings with the Securities and Exchange Commission disclosing intended acquisitions of the stock shall be included in the application.

*e.* A description of stock subscription rights to be afforded members of the mutual insurance holding company in conjunction with the stock offering.

*f.* A detailed description of all expenses to be incurred in conjunction with the stock offering.

*g.* An explanation of how funds raised by the stock offering are to be used.

*h.* Any other information requested by the commissioner.

**46.10(3)** No application regarding a planned stock offering shall be approved unless the plan contains provisions:

*a.* Prohibiting officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates from purchase or ownership of shares of the stock offering, or issuance of stock options to or for the benefit of such officers, directors and insiders, for a period of at least six months following the first date the offering was publicly and regularly traded. This paragraph shall not be construed to limit the rights of officers, directors and insiders from exercising subscription rights generally accorded members of the mutual insurance holding company, except that, pursuant to such subscription rights, the officers, directors and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or own, in the aggregate, more than 5 percent of the stock offering for a period of at least six months following the first date the offering was publicly and regularly traded.

*b.* Requiring a majority of the members of the board of directors of the mutual insurance holding company to be persons who are not interested persons of the mutual insurance holding company or of an affiliated person of such company. The commissioner may waive this requirement upon a showing of good cause.

*c.* For the mutual insurance holding company to adopt articles of incorporation prohibiting any waiver of dividends from stock subsidiaries except under conditions specified in its articles of incorporation and after approval of the waiver by the board of directors of the mutual insurance holding company and the commissioner.

*d.* Requiring that, after the initial stock offering by an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company, the boards of directors of each such insurance company or intermediate

holding company include at least three directors who are not interested persons of the mutual insurance holding company.

*e.* Establishing, within the board of directors of the corporation offering stock, a pricing committee consisting exclusively of directors who are not interested persons whose responsibility is to evaluate and approve the price of any stock offering.

**46.10(4)** An insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company may issue more than one class of stock provided, however, that at all times a majority of the voting stock is held by the mutual insurance holding company or its subsidiary and, provided further, that no class of common stock may possess greater dividend or other rights than the class held by the mutual insurance holding company or its subsidiary.

**46.10(5)** The commissioner may hire, at the applicant's expense, attorneys, actuaries, accountants, investment bankers and other experts as may reasonably be necessary to assist the commissioner in reviewing the application.

**46.10(6)** The commissioner may, in the commissioner's discretion, hold a public hearing regarding any application for approval of a stock offering. Upon receipt of an application for approval of a stock offering which includes an initial offering of stock, the commissioner shall hold a public hearing at which all interested parties may appear and present evidence and argument regarding the applicant's planned offering. The commissioner shall provide the applicant adequate notice of the hearing, such that applicant can provide notice of the hearing to members of the mutual insurance holding company, in a manner approved by the commissioner, not less than 20 days prior to the hearing. Following the hearing, the commissioner may approve, conditionally approve, or deny the application. The commissioner may approve the plan if:

- a.* The offering complies with these rules and other provisions of law,
- b.* The method for establishing the price of a stock offering is consistent with generally accepted market or industry practices for establishing stock offering prices in similar transactions, and
- c.* The plan and offering will not unfairly impact the interests of members of the mutual insurance holding company.

None of the foregoing shall be deemed to prohibit the filing of a registration statement with the Securities and Exchange Commission prior to or concurrently with the giving of notice to members.

**46.10(7)** Notwithstanding the provisions of 46.10(1) to 46.10(6) above, stock offerings which are not an initial stock offering, and which offer stock regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the commissioner, or designated on the national association of securities dealers automated quotations—national market system (NASDAQ), may be sold in accordance with the following procedure: If a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company, or an insurance company subsidiary of an intermediate holding company intends to make a stock offering which would be governed by the provisions of this subrule, that entity shall deliver to the commissioner, not less than 30 days prior to the offering, a notice of the planned stock offering and information regarding *(a)* the total number of shares intended to be offered, *(b)* the intended date of sale, *(c)* evidence the stock is regularly traded on one of the public exchanges noted above, and *(d)* a record of the trading price and trading volume of the stock during the prior 52 weeks. The commissioner shall be deemed to have approved the sale unless, within 30 days following receipt of such notice, the commissioner issues an objection to the sale. If the commissioner issues an objection to the sale, the procedures set forth in subrule 46.10(2) shall be followed to determine whether the commissioner approves of the proposed sale.

**46.10(8)** Approval of a stock offering obtained under either subrule 46.10(6) or 46.10(7) above shall expire 90 days following the date of the approval or deemed approval, except as otherwise provided by order of the commissioner.

**46.10(9)** No prospectus, information, sales material or sales presentation by the applicant, or by any representative, agent or affiliate of the applicant, shall contain a representation that the commissioner's

approval of a stock offering constitutes an endorsement of the price, price range, or any other information relating to the stock.

**46.10(10)** The following practices are prohibited:

- a.* Borrowing funds from the mutual insurance holding company, or its subsidiaries and affiliates, to finance the purchase of any portion of a stock offering.
- b.* Payment of commissions, “special fees” and any other special payments or extraordinary compensation to officers, directors, interested persons and affiliates, for arranging, promoting, aiding or assisting in reorganization to a mutual insurance holding company, or for arranging, promoting, aiding, assisting or participating in the structuring and placement of a stock offering.
- c.* Entering into an understanding or agreement transferring legal or beneficial ownership of stock to another person in avoidance of these rules.